IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2506 of 2003

with

CIVIL APPLICATION No 8485 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI Sd/-
and
HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

VRAJLAL DEVJIBHAI

Versus

GEB

Appearance:

1. First Appeal No. 2506 of 2003

MR KETAN SHAH Advocate with MR TUSHAR MEHTA
Advocate for Appellant
MS LILU K BHAYA Advocate for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 24/08/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.H.WAGHELA for the Court)

1. This application is preferred from the consolidated judgment in Special Civil Suit No.37 of 1995 and Regular Civil Suit No.353 of 1994, whereby the appellant's suit was dismissed and the respondent's suit for recovery of its electricity bill with delayed payment charges was partly decreed. The present appeal is confined only to the judgment in the respondent's suit, being Special Civil Suit No.37 of 1995. The main grounds of challenge are that the trial Court had erred in relying upon the decision of the officer of the respondent-Board and the kabulatnama and rojkam on the basis of which value of energy alleged to have been dishonestly abstracted was assessed.

2. According to the evidence on record, 75 HP electrical connection was given to the appellant for his industry of oil mill on 20.5.1994. The electrical installation was inspected in presence of the appellant himself and, according to the Inspection Report (Ex.72) also signed by the appellant, P.T.wire and load-side wire in the meter terminal block were cut and the meter was not working. Thus, wiring in the sealed meter box was found to have been tampered and the meter was, therefore, taken away for testing. A detailed rojkam-cum-statement (kabulatnama) (Ex.71) with a diagram of the meter terminal block and the position of wires was also made then and there and the appellant had signed the same. According to the proceedings recorded on the next day, i.e. 21.5.1994, (Ex.101), the meter was opened and tested in the Meter Testing Laboratory at Junagadh wherein a finding was recorded to the effect that it appeared to be a case of theft of power.

2.1 During the course of hearing before the trial Court, oral evidence of a Deputy Engineer of the respondent was recorded at Ex.70 and that of Junior Engineer of the Meter Testing Laboratory at Ex.100; whereas deposition of the appellant was recorded at Ex.110.

2.2 The aforesaid documentary and oral evidence established the fact that wiring of the meter was tampered and the wires which would have made the meter run and record consumption of electrical energy were cut by some sharp-cutting instrument. The case of the

appellant in defence that the signatures on the aforesaid rojkam and statements were obtained by threat and coercion was not believed in absence of any evidence of such threat or coercion and any legal action in that regard as also in view of the fact that the defence was wholly unbelievable. The assessment made of the value of energy dishonestly abstracted in accordance with Clause 34 of the Conditions of Supply of Electrical Energy was found to be in order and the supplementary bill issued to the appellant was found to be payable and the suit was, therefore, decreed except for the delayed payment charges @ 24% which was substituted by the order to pay interest @ 9%.

3. It was argued by the learned counsel for the appellant that there was no evidence of actual abstraction of energy and the electricity bill in question was based on assumptions. The judgment of the Supreme Court in RAM CHANDRA PRASAD SHARMA & ORS. v. STATE OF BIHAR & ANR. [AIR 1967 SC 349] was relied upon for the proposition that before raising a presumption that there was dishonest abstraction of energy, the presence of a perfected artificial means which will render abstraction of energy possible has to be established and it has to be shown that there was dishonest abstraction, consumption or use of electrical energy. That, it was not enough to only say that the mater was tampered with. The ratio of that judgment is not applicable in the facts of the present case since that judgment was rendered in appeals preferred from criminal cases where prosecution was launched against certain persons for alleged dishonest abstraction of energy and the presumption about theft based on existence of artificial means for abstraction was an issue.

4. In the facts of the present case, satisfaction of the Board's officer that the appellant had dishonestly abstracted energy by artificial means was recorded and assessment of electrical energy thus abstracted was made according to the prescribed formula contained in Clause 34 of the Conditions of Supply of Electrical Energy which reads as under:

"34. Payment for energy dishonestly used or abstracted or maliciously wasted or diverted.

Where it is established to the satisfaction of Board's officer that a consumer

has dishonestly abstracted, used, consumed or maliciously caused energy to be wasted, or diverted, the value of the electrical energy thus abstracted, used, consumed, wasted or diverted shall be assessed by such officer for the period and in the manner specified hereinbelow and the value of energy so assessed shall be collected by including the same in the next bill or by a separate bill. Such amount shall always be deemed to be the arrears of electricity dues for all purposes.

Provided that the value of the electricity energy so assessed to have been abstracted, used, consumed, wasted or diverted shall be subject to review by the Appellate Authority on the representation/appeal being filed by the consumer in the manner stated hereinbelow.

Provided further that....."

(emphasis added)

There is no dispute about the calculation being in accordance with the formula and procedure of assessment.

5. As held by the Supreme Court in PUNJAB STATE ELECTRICITY BOARD & ANR v. ASHWANI KUMAR [(1997) 5 SCC 120], although Civil Court had jurisdiction to go into disputed questions of civil nature, cognizance of civil cause was excluded by virtue of statutory rules providing for disposing of the disputes expeditiously. It was held that the Civil Court was not justified in entertaining the suit and giving a declaration without directing the party to avail of the remedy provided under the Indian Electricity Act, the Indian Electricity (Supply) Act and the instructions issued by the Board in that behalf from time to time. It is also held by the Supreme Court in HYDERABAD VANASPATHI LTD. v. A.P.STATE ELECTRICITY BOARD & OTHERS [(1998) 4 SCC 470] that the Board in performance of a statutory duty supplied energy on certain specific terms and conditions framed in exercise of a statutory power and undoubtedly they were statutory in character. It is also held that for ascertaining the loss and fixing the compensation, a uniform procedure has to be framed and a machinery constituted and if a consumer is found indulging in any malpractice etc., he has to pay additional charges as may be levied by the

Board. Thus, the proper remedy for the appellant was to prefer an appeal to the Appellate Authority as provided in the Conditions of Supply of Electrical Energy and the appellant having admittedly not availed of that remedy, it was not open for him to take up the same contentions by way of defence in the suit filed for recovery of the dues assessed in accordance with the Conditions of Supply. The trial Court has not committed any error in reaching its findings in favour of the respondent for the reasons given by it with which we fully agree.

6. In the above facts and circumstances, we do not find any substance in the appeal and the appeal is, therefore, summarily dismissed. The Civil Application stands disposed in view of the order made in the Appeal.

Sd/-

(R.K.Abichandani, J.)

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)